

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application : **10/579,414**  
Applicant(s) : **KORST et al.**  
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Title: **USER AWARE AUDIO PLAYING APPARATUS AND METHOD**

Mail Stop: **APPEAL BRIEF - PATENTS**  
Commissioner for Patents  
Alexandria, VA 22313-1450

**APPEAL UNDER 37 CFR 41.37**

Sir:

This is an appeal from the decision of the Examiner dated 4 November 2008, finally rejecting claims 1-4 and 6-21 of the subject application.

This paper includes (each beginning on a separate sheet):

- 1. Appeal Brief;**
- 2. Claims Appendix;**
- 3. Evidence Appendix; and**
- 4. Related Proceedings Appendix.**

## **APPEAL BRIEF**

### **I. REAL PARTY IN INTEREST**

The above-identified application is assigned, in its entirety, to **Koninklijke Philips Electronics N. V.**

### **II. RELATED APPEALS AND INTERFERENCES**

Appellant is not aware of any co-pending appeal or interference that will directly affect, or be directly affected by, or have any bearing on, the Board's decision in the pending appeal.

### **III. STATUS OF CLAIMS**

Claim 5 is canceled.

Claims 1-4 and 6-21 are pending in the application.

Claims 11-12 and 19-21 stand rejected by the Examiner under 35 U.S.C. 101.

Claims 1-4 and 6-21 stand rejected by the Examiner under 35 U.S.C. 103(a).

Claims 1, 11, and 12 had been rejected by the Examiner under 35 U.S.C. 112, first paragraph, but this rejection was withdrawn in the subsequent Advisory Action.

These rejected claims are the subject of this appeal.

### **IV. STATUS OF AMENDMENTS**

An amendment was filed subsequent to the final rejection in the Office Action dated 4 November 2008, but not entered.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER<sup>1</sup>**

The invention addresses the control of a playback device, and particularly the selection of content material based on the likes and dislikes of a plurality of users (applicants' specification, page 1, lines 2-11). The inventor recognized that conventional selection based on a composite of users' likes and dislikes is often unsuitable when the likes and dislikes of the users present are widely divergent (page 2, lines 18-24; page 3, lines 4-7). To better accommodate a variety of users, each user is provided the option of identifying his or her presence in the area, and selecting a particular playback mode (page 5, lines 20-24). In a first mode, the device will avoid selecting content material that the user dislikes; in a second mode, the device will preferably select content material that the user likes (page 5, lines 22-28). By distinguishing the avoidance of disliked material from the selection of liked material, each user can be assured that material that is specifically disliked will not be presented, regardless of the preferences of all the other users; by allowing each user to also assert preference for liked material, 'dominant' users can be accommodated (page 6, line 31 - page 7, line 2). Preferably, the device includes a control that influences how strictly the device is to enforce the above process, to avoid the non-selection of all available content material (page 6, lines 12-20).

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<sup>1</sup> It is respectfully noted that it is not the appellants' intention that the claimed embodiments of this invention be limited to operation within the example embodiments described in this brief, beyond what is required by the claim language. These examples and their description are provided to facilitate ease of understanding and to comply with the requirements of an appeal brief, without intending that any further interpreted limitations be read into the claims as presented.

As claimed in independent claim 1, the invention comprises a player apparatus (FIG. 1) comprising:

an input device (1) that is configured to identify a presence of each user of a plurality of users at a location of the player apparatus, and a playback mode associated with each user (page 5, lines 20-24),

a storage element that is configured to provide preferences that include likes and dislikes of each user (page 5, lines 20-21; page 7, lines 27-28), and

a control element that is configured to select content material to be played by the player apparatus based on the preferences of the plurality of users present (page 6, lines 3-5), wherein

the control element is configured to select the content material, such that, for each present user:

if the playback mode of the user is a first mode, the selection of the content material is based primarily on the dislikes of the user (page 5, lines 24-25), and

if the playback mode of the user is a second mode, the selection of the content material is based on the likes of the user (page 5, lines 26-28).

As claimed in dependent claim 2, the invention comprises the player apparatus of claim 1, wherein the input device includes a set of buttons (11-14), wherein each button is associated with one or more users of the plurality of users (page 5, lines 20-21).

As claimed in dependent claim 3, the invention comprises the player apparatus of claim 2, wherein each button is configured to indicate a state associated with the one or more users (page 5, lines 21-22).

As claimed in dependent claim 4, the invention comprises the player apparatus of claim 3, wherein the state includes:

a first state indicating that the associated user is not present (page 5, lines 22-24),

a second state indicating that the associated user is present and the playback mode is the first mode (page 5, lines 24-25), and

a third state indicating that the associated user is present and the playback mode is the second mode (page 5, lines 26-28).

As claimed in dependent claim 14, the invention comprises the player apparatus of claim 1, wherein the control element is configured to select only content material that is liked by all users in the second mode (page 6, lines 10-12).

As claimed in dependent claim 15, the invention comprises the player apparatus of claim 1, wherein the control element is configured to select only content material that is liked by all users in the second mode, and not disliked by any user in the first mode (page 6, lines 9-12).

As claimed in dependent claim 16, the invention comprises the player apparatus of claim 1, wherein the control element is configured to select only content material that is not disliked by any user (page 6, lines 9-10).

As claimed in independent claim 11, the invention comprises a method of playing content material based on preferences of a plurality of users, the method (FIG. 2) comprising (page 7, lines 29-32):

receiving an indication of a presence of each user of the plurality of users (100; page 7, line 30), and

receiving an indication of a playback mode associated with each user (page 5, lines 22-24), and

selecting content material for playback based on preferences that include likes and dislikes of each user (page 5, lines 20-21), such that, for each user:

if the playback mode of the user is a first mode, the selection of the content material is based primarily on the dislikes of the user (page 5, lines 24-25), and

if the playback mode of the user is a second mode, the selection of the content material is based on the likes of the user (page 5, lines 26-28).

As claimed in dependent claim 18, the invention comprises the method of claim 11, wherein the control element is configured to select only content material that is liked by all users in the second mode (page 6, lines 10-12).

As claimed in dependent claim 19, the invention comprises the method of claim 11, wherein the control element is configured to select only content material that is liked by all users in the second mode, and not disliked by any user in the first mode (page 6, lines 9-12).

As claimed in dependent claim 20, the invention comprises the method of claim 11, wherein the control element is configured to select only content material that is not disliked by any user (page 6, lines 9-10).

As claimed in independent claim 12, the invention comprises a computer-readable medium (FIG. 3) having embodied thereon a computer program for processing by a computer comprising a code segments for playing content material based on preferences of a plurality of users, the code segments comprising:

a first code segment enabling determination of a presence of each user of the plurality of users (210; page 8, lines 2-4),

a second code segment enabling determination of likes and dislikes of each user (220; page 8, lines 6-7), and

a third code segment enabling selection of content material for playback (220; page 8, lines 4-7), such that, for each user:

if the playback mode of the user is a first mode, the selection of the content material is based primarily on the dislikes of the user (page 5, lines 24-25), and

if the playback mode of the user is a second mode, the selection of the content material is based on the likes of the user (page 5, lines 26-28).

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 11 and 19-21 stand rejected under 35 U.S.C. 101.

Claims 1-2 and 6-21 stand rejected under 35 U.S.C. 103(a) over Kosmi (USP 7,293,060), Zamir et al. (USPA 2003/0236582, hereinafter Zamir), and Cliff (USP 6,746,246).

Claims 3-4 stand rejected under 35 U.S.C. 103(a) over Kosmi, Zamir, Cliff, and Vong et al. (USP 6,917,373, hereinafter Vong).

## **VII. ARGUMENT**

### **Claims 11 and 19-21 stand rejected under 35 U.S.C. 101**

#### **Claims 11 and 19-21**

The Examiner asserts that claims 11 and 19-21 are method claims that are not tied to another statutory category, and do not transform underlying subject matter. The applicants respectfully disagree with this assertion. Claims 11 and 19-21 address a method of playing content material that includes a selection of content material from among an entirety of the available content material. The applicants respectfully maintain that the content material represents physical objects (recordings of visual images and/or sound), and the claimed method of playing content material by selecting such physical material based on the likes and dislikes of a plurality of users identifies a particular technique for performing this process and does not pre-empt all methods for determining material to be played back.

In re Bilski, 545 F.3d 943, 88 USPQ2d 1384 (Fed. Cir. 2008), the court stated:

"In contrast, we held one of Abele's dependent claims to be drawn to patent-eligible subject matter where it specified that "said data is X-ray attenuation data produced in a two dimensional field by a computed tomography scanner." Abele, 684 F.2d at 908-09. This data clearly represented physical and tangible objects, namely the structure of bones, organs, and other body tissues. Thus, the transformation of that raw data into a particular visual depiction of a physical object on a display was sufficient to render that more narrowly-claimed process patent-eligible.

We further note for clarity that the electronic transformation of the data itself into a visual depiction in Abele was sufficient; the claim was not required to involve any transformation of the underlying physical object that the data represented. We believe this is faithful to the concern the Supreme Court articulated as the basis for the machine-or-transformation test, namely the prevention of pre-emption of fundamental principles. So long as the claimed process is limited to a practical application of a fundamental principle to transform specific data, and the claim is limited to a visual depiction that represents specific physical objects or substances, there is no danger that the scope of the claim would wholly pre-empt all uses of the principle."



The applicants respectfully maintain that the data that is being processed in the applicants' invention clearly represents physical things, namely data corresponding to the images and/or sounds produced during the recording of the content material. An image of a person performing is at least as physical as an image of an X-ray of such a person; data representing the sound produced while the content material is being recorded is equally physical. Processing such data to identify/select material that is to be physically played back clearly does not pre-empt fundamental principles, and the claimed method of playing content material provides for a visual depiction of the content material if the content material is audio-visual, or an audio depiction of the content material if the content material is audio.

Because claims 11 and 19-21 are limited to a practical application of selecting material to be played back, and do not wholly pre-empt all methods of selecting content material to be played back, the applicants respectfully maintain that claims 11 and 19-21 address patentable subject matter under 35 U.S.C. 101 in accordance with the principles established in *Abele* and reaffirmed in *Bilski*.

**Claims 1-2 and 6-21 stand rejected under 35 U.S.C. 103(a)  
over Kosmi, Zamir, and Cliff**

**Claims 1-2, 6-21**

The combination of *Kosmi, Zamir, and Cliff* fails to disclose selecting content material such that, for each present user of a plurality of users: if the playback mode of the user is a first mode, the selection of the content material is based primarily on the dislikes of the user, and if the playback mode of the user is a second mode, the selection of the content material is based on the likes of the user, as specifically claimed in claim 1, upon which claims 2-10 and 13-16 depend. Independent claim 11, upon which claims 17-21 depend, and independent claim 12, include similar features.

Kosmi discloses a virtual 'disc-jockey' service that provides 'party music' to virtual attendees of the party via the Internet. A party organizer contracts for this service at a given date and time, and informs the service of the type of music to be played. Optionally, the party organizer can allow some or all of the party attendees to submit requests to the virtual disc-jockey, to influence the selection of music as the party progresses. The party organizer may identify material that is not to be played, and requests for such material will be denied (Kosmi, column 10, lines 39-45). Of particular note, only a single user (the party organizer) is permitted to express such a 'dislike' for material that is not to be played. Any particular selection may be disliked by some or all of the other 'users' of Kosmi's service.

Zamir discloses a conventional feedback system wherein a score associated with a particular item is increased if the user provides positive feedback, and decreased if the user provides negative feedback. Zamir does not address the concurrent use of this system by multiple users, and does not address the selection of content material based on the likes and dislikes of multiple users. Further, the applicants respectfully maintain that Zamir's technique of providing a composite score based on likes and dislikes teaches away from the applicants' technique of maintaining a distinction between material that a user likes and material that a user dislikes

Cliff discloses a system that composes a song based on the reaction of an audience to presented songs. An unpopular song is modified by preferably replacing samples of the song with samples from a more popular song, to iteratively create a progressively better song (Cliff, column 2, lines 60-67).

Not only has the Examiner failed to define the assumed level of skill in the art, the Examiner also fails to identify how the combination of these references would lead one of skill in the art to the applicants' claimed invention. The Examiner fails to identify where any of the cited references discloses a system that allows control of the selection of content material based on the dislikes of each user of a plurality of users, as taught and claimed by the applicants.

None of the cited references allows each of a plurality of users to select between a mode that controls the selection based on the dislikes of the user and a mode that controls the selection based on the likes of the user, as taught and claimed by the applicants.

In *KSR Int'l. Co. v. Teleflex, Inc.*, the Supreme Court noted that the analysis supporting a rejection under 35 U.S.C. 103(a) should be made explicit, and that it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed:

"Often, it will be necessary ... to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an **apparent reason** to combine the known elements **in the fashion claimed by the patent at issue**. To facilitate review, this analysis should be made explicit." *KSR*, 82 USPQ2d 1385 at 1396 (emphasis added).

The Examiner asserts that one of skill in the art would be "motivated to include the usage of metadata as disclosed by Zamir within the Kosmi player for the purpose of adapting a delivery mode of media to users based on the preferences of users in their reactions to the delivered media" (Office action, page 6, lines 5-8). The applicants note that this assertion does not lead one of skill in the art toward a combination of elements in the fashion claimed by the applicants. The Examiner's proposed motivation addresses how the preferences of users are collected, which has no bearing on the applicants' claimed invention. The applicants do not claim any particular method for collecting the preferences of users, and the means for collecting such preferences are immaterial to the applicants' teachings and claims.

Kosmi discloses selecting material based on a purchaser's expressed preferences, and adapting a delivery mode of media to users based on explicit requests or expressions of preferences by users of the system. Applying Zamir's scoring system for determining a user's implicit preferences based on a user's reaction to the delivered material provides an alternative to Kosmi's explicit preferences and requests, but does not lead one toward the applicants' claimed invention. That is, the proposed combination of Kosmi and Zamir does not include any element of the applicants' claimed invention that is not included in Kosmi's teachings without Zamir. The Examiner's asserted reason to combine Kosmi and

Zamir has no relevance to the elements of the applicants' claimed invention that are absent in Kosmi.

The Examiner asserts that one of skill in the art would be motivated "to include a means for registering the dislike of a crowd to a delivered media as taught by Cliff within the Kosmi in view of Zamir device... for the purpose of detecting crowd reaction to a delivered media and tailoring content toward positive expression of crowd reaction" (Office action, page 6, lines 14-18). As with the combination of Kosmi and Zamir, the applicants again note that this assertion does not lead one of skill in the art toward a combination of elements in the fashion claimed by the applicants. The Examiner's proposed motivation addresses how the preferences of users are collected, which has no bearing on the applicants' claimed invention.

Applying Cliff's teachings of monitoring a crowd's reaction to delivered material provides an alternative to Kosmi's explicit preferences and requests, but does not lead one toward the applicants' claimed invention. That is, the proposed combination of Kosmi, Zamir, and Cliff does not include any element of the applicants' claimed invention that is not included in Kosmi's teachings without Zamir or Cliff. The Examiner's asserted reason to combine Kosmi, Zamir, and Cliff has no relevance to the elements of the applicants' claimed invention that are absent in Kosmi.

The applicants respectfully maintain that, absent the applicants' disclosure, one of skill in the art would have no apparent reason to combine Kosmi, Zamir, and Cliff in the manner claimed by the applicants. Kosmi teaches an electronic disc jockey service; Zamir teaches selection of items based on user reactions; and Cliff teaches a method and system for composing a song. The applicants respectfully maintain that there is no apparent reason to combine techniques for composing a song (Cliff) with a system for selecting songs for playback (Kosmi and Zamir).

The applicants respectfully maintain that there is no apparent reason that one of skill in the art would look to a song-composing system such as taught by Cliff to create or enhance a music selection system such as taught by Kosmi or Zamir. Further, even if such a combination were formed, it would lead away from the applicants' claimed invention. The applicants teach a system that is sensitive to each user's particular dislikes, thereby reducing the likelihood of annoying any user. Cliff's system provides a measure of a group's reaction to presented music, which has the effect of masking the dislikes of individual users if a majority of the users like the presented music.

Because there is no apparent reason to combine Kosmi, Zamir, and Cliff, and because even if such a combination is formed, it fails to disclose selecting content material such that, for each present user of a plurality of users: if the playback mode of the user is a first mode, the selection of the content material is based primarily on the dislikes of the user, and if the playback mode of the user is a second mode, the selection of the content material is based on the likes of the user, as specifically claimed in each of the applicants' independent claims 1, 11, and 12, the applicants respectfully maintain that the rejection of claims 1-2 and 6-21 under 35 U.S.C. 103(a) over Kosmi, Zamir, and Cliff is unfounded, and should be reversed by the Board.

#### **Claims 2-4**

The combination of Kosmi, Zamir, and Cliff fails to disclose an input device that includes a set of buttons, wherein each button is associated with one or more users of the plurality of users, as specifically claimed in claim 2, upon which claims 3-4 depend.

The Examiner asserts that Kosmi discloses this feature at column 4, lines 18-42, and FIG. 3. The applicants respectfully disagree with this assertion. At the cited text, and at FIG. 3, Kosmi discloses a plurality of input devices. Each user that is authorized to provide input to the virtual disc-jockey provider uses one or more input devices to provide this input. Kosmi fails to disclose or illustrate an input device that has a set of buttons, wherein each button is associated with one or more users, and the Examiner fails to identify an input device with such a set of buttons.

Because the combination of Kosmi, Zamir, and Cliff fails to disclose an input device that includes a set of buttons, wherein each button is associated with one or more users of the plurality of users, as specifically claimed in claim 2, the applicants respectfully maintain that the rejection of claim 2 under 35 U.S.C. 103(a) over Kosmi, Zamir, and Cliff is unfounded, and should be reversed by the Board.

#### **Claims 14-16 and 18-21**

The Examiner fails to identify where Kosmi, Zamir, or Cliff discloses the features claimed in claims 14-16 and 18-21, and merely offers a conclusory statement that these features are obvious in view of these references. The applicants respectfully note that it is the duty of the Examiner to specifically identify each and every element and limitation of a claim in the cited reference as per 37 CFR 1.104(c)(2) and MPEP 707, which explicitly state that “the particular part relied on must be designated” and “the pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.”

Because the Examiner fails to establish a prima facie case of obviousness in the rejection of claims 14-16 and 18-21 under 35 U.S.C. 103(a) over Kosmi, Zamir, and Cliff, the applicants respectfully maintain that the rejection of these claims is unfounded, and should be reversed by the Board.

#### **Claims 14 and 18**

The combination of Kosmi, Zamir, and Cliff fails to disclose a player that is configured to select only content material that is liked by all users in a second mode, as claimed in each of claims 14 and 18, and the Examiner fails to identify where this feature is disclosed in any of the cited references. Accordingly, the applicants respectfully maintain that the rejection of claims 14 and 18 under 35 U.S.C. 103(a) over Kosmi, Zamir, and Cliff, is unfounded, and should be reversed by the Board.

### **Claims 15 and 19**

The combination of Kosmi, Zamir, and Cliff fails to disclose a player that is configured to select only content material that is liked by all users in the second mode, and not disliked by any user in the first mode, as claimed in each of claims 15 and 19, and the Examiner fails to identify where this feature is disclosed in any of the cited references. Accordingly, the applicants respectfully maintain that the rejection of claims 15 and 19 under 35 U.S.C. 103(a) over Kosmi, Zamir, and Cliff is unfounded, and should be reversed by the Board.

### **Claims 16 and 20**

The combination of Kosmi, Zamir, and Cliff fails to disclose a player that is configured to select only content material that is not disliked by any user, as claimed in each of claims 16 and 20, and the Examiner fails to identify where this feature is disclosed in any of the cited references. Accordingly, the applicants respectfully maintain that the rejection of claims 16 and 20 under 35 U.S.C. 103(a) over Kosmi, Zamir, and Cliff is unfounded, and should be reversed by the Board.

### **Claims 3-4 stand rejected under 35 U.S.C. 103(a) over Kosmi, Zamir, Cliff, and Vong**

#### **Claims 3-4**

Claims 3 and 4 are dependent upon each of claims 1 and 2, and in this rejection, the Examiner relies on the combination of Kosmi, Zamir, and Cliff for teaching the elements of claims 1 and 2.

As noted above, even assuming a reason to form a combination of Kosmi, Zamir, and Cliff, the combination fails to disclose the elements of claim 1 or claim 2. Accordingly, the applicants respectfully maintain that the rejection of claims 3-4 under 35 U.S.C. 103(a) is unfounded, and should be reversed by the Board.

#### **Claim 4**

The combination of Kosmi, Zamir, Cliff, and Vong fails to disclose a button that indicates a state associated with a user, wherein the state includes: a first state indicating that the associated user is not present, a second state indicating that the associated user is present and the playback mode is the first mode, and a third state indicating that the associated user is present and the playback mode is the second mode.

The Examiner asserts that the combination of Kosmi, Zamir, and Cliff disclose a first state indicating that the associated user is not present, a second state indicating that the associated user is present and the playback mode is the first mode, and a third state indicating that the associated user is present and the playback mode is the second mode, but fails to identify where any of these references provide such a teaching.

Because the Examiner fails to establish a prima facie case of obviousness in this rejection of claim 4 with regard to Kosmi, Zamir, and Cliff, the applicants respectfully maintain that the rejection of claim 4 under 35 U.S.C. 103(a) over Kosmi, Zamir, Cliff, and Vong is unfounded, and should be reversed by the Board.



## CONCLUSIONS

Because there is no apparent reason to combine Kosmi, Zamir, and Cliff, and because even if such a combination is formed, it fails to disclose selecting content material such that, for each present user of a plurality of users: if the playback mode of the user is a first mode, the selection of the content material is based primarily on the dislikes of the user, and if the playback mode of the user is a second mode, the selection of the content material is based on the likes of the user, as specifically claimed in each of the applicants' independent claims 1, 11, and 12, the applicants respectfully request that the Examiner's rejection of claims 1-4 and 6-21 under 35 U.S.C. 103(a) be reversed by the Board, and the claims be allowed to pass to issue.

Because the cited prior art also fails to disclose the particular features of claims 2, 4, 14-16 and 18-21, and because the Examiner fails to identify where the prior art discloses each of these features, the applicants respectfully request that the Examiner's rejection of claims 2-4, 14-16, and 18-21 under 35 U.S.C. 103(a) be reversed by the Board, and the claims be allowed to pass to issue.

Respectfully submitted,

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## CLAIMS APPENDIX

1. A player apparatus comprising:

an input device that is configured to identify a presence of each user of a plurality of users at a location of the player apparatus, and a playback mode associated with each user,

a storage element that is configured to provide preferences that include likes and dislikes of each user, and

a control element that is configured to select content material to be played by the player apparatus based on the preferences of the plurality of users present, wherein

the control element is configured to select the content material, such that, for each present user:

if the playback mode of the user is a first mode, the selection of the content material is based primarily on the dislikes of the user, and

if the playback mode of the user is a second mode, the selection of the content material is based on the likes of the user.

2. The player apparatus of claim 1, wherein the input device includes a set of buttons, wherein each button is associated with one or more users of the plurality of users.

3. The player apparatus of claim 2, wherein each button is configured to indicate a state associated with the one or more users.

4. The player apparatus of claim 3, wherein the state includes:

a first state indicating that the associated user is not present,

a second state indicating that the associated user is present and the playback mode is the first mode, and

a third state indicating that the associated user is present and the playback mode is the second mode.

5 (Canceled)

6. The player apparatus of claim 1, wherein the input device is configured to indicate a preferred genre/mood of the material to be reproduced by the player apparatus.

7. The player apparatus of claim 1, wherein the preferences include volume, bass, treble preferences.

8. The player apparatus of claim 1, wherein the input device is configured to provide an indication of how strictly the player follows the preferences of the plurality of users.

9. The player apparatus of claim 1, wherein the the control element includes recommender technology means for selecting the content material to be played.

10. The player apparatus of claim 1, wherein the player apparatus includes portable audio players, car audio equipment, internet radios, or digital jukebox devices.

11. A method of playing content material based on preferences of a plurality of users, the method comprising:

- receiving an indication of a presence of each user of the plurality of users, and
- receiving an indication of a playback mode associated with each user, and
- selecting content material for playback based on preferences that include likes and dislikes of each user, such that, for each user:

- if the playback mode of the user is a first mode, the selection of the content material is based primarily on the dislikes of the user, and

- if the playback mode of the user is a second mode, the selection of the content material is based on the likes of the user.

12. A computer-readable medium having embodied thereon a computer program for processing by a computer comprising a code segments for playing content material based on preferences of a plurality of users, the code segments comprising:

    a first code segment enabling determination of a presence of each user of the plurality of users,

    a second code segment enabling determination of likes and dislikes of each user, and

    a third code segment enabling selection of content material for playback, such that, for each user:

        if the playback mode of the user is a first mode, the selection of the content material is based primarily on the dislikes of the user, and

        if the playback mode of the user is a second mode, the selection of the content material is based on the likes of the user.

13. The player apparatus of claim 1, wherein the control element is configured to prevent selection of content material that is disliked by at least one user.

14. The player apparatus of claim 1, wherein the control element is configured to select only content material that is liked by all users in the second mode.

15. The player apparatus of claim 1, wherein the control element is configured to select only content material that is liked by all users in the second mode, and not disliked by any user in the first mode.

16. The player apparatus of claim 1, wherein the control element is configured to select only content material that is not disliked by any user.

17. The method of claim 11, wherein the control element is configured to prevent selection of content material that is disliked by at least one user.

18. The method of claim 11, wherein the control element is configured to select only content material that is liked by all users in the second mode.

19. The method of claim 11, wherein the control element is configured to select only content material that is liked by all users in the second mode, and not disliked by any user in the first mode.

20. The method of claim 11, wherein the control element is configured to select only content material that is not disliked by any user.

21. The method of claim 11, including receiving a degree of strictness to be applied, and controlling a degree to which the selection of content material is affected by the likes and dislikes of the users.

## **EVIDENCE APPENDIX**

No evidence has been submitted that is relied upon by the appellant in this appeal.

**RELATED PROCEEDINGS APPENDIX**

Appellant is not aware of any co-pending appeal or interference which will directly affect or be directly affected by or have any bearing on the Board's decision in the pending appeal.